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EXAMINER

HENRY, RODNEY M

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/775,680	<b>Applicant(s)</b> IRWIN, CHARLES F.	
	<b>Examiner</b> RODNEY HENRY	<b>Art Unit</b> 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/11/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The following is a non-final, first office action on the merits. Claims 1-47, as originally filed, are currently pending and have been considered below.

#### ***Claim Objections***

2. Claim 8 is objected to because of the following informalities: Claim 8 is an improper multiple dependent claim. Claim 8 should read “The method as in claim 6 or 7...”, NOT “The method is claimed in claim 6 or 7...”. Appropriate correction is required.

3. Claim 16 is an improper multiple dependent claim. It should read “The method as in any of claims 1, 6, and 15..”, NOT “The method as claimed in claims 1, 6, and 15...”. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-20, 43, 44, and 47 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 1-20, 43, 44, and 47 as best understood, it appears that the claimed method steps or processes are not statutory. Based on Supreme Court precedent <sup>1</sup> and Federal Circuit decisions a §101 process must

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<sup>1</sup> *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (197); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

(1) be meaningfully tied to another statutory class (such as a particular apparatus) or

(2) transform underlying subject matter (such as an article or materials) to a different state or thing.<sup>2</sup>

The independent claim is directed towards steps of “selecting”, “specifying”, “collecting and storing”, “analyzing”, and “determining”. Since the claims are directed to a method or a process without imposing meaningful limits on the method claim’s scope (beyond data gathering and outputting, as two examples), these claims are non-statutory.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**7. Claims 1-5, 12, 14, 15, 20-25, 32, 34, 35, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Eicher, Jr. et al. (US 2002/0099598).**

#### **As per Claim 1:**

Eicher Jr. et al. discloses a system for effectuating collaboration between one or many buyers and sellers, and their third party service providers (collectively called)

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<sup>2</sup> The Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advance. *Gottschalk v. Benson*, 409 U.S 63, 71 (1972).

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("partners") in a supply community [which enables an establishing partner to establish consequences that motivate one or more other partners to achieve a target minimum level of performance on at least one performance indicator that measures aggregate performance for a set of events defined by a time or count period wherein the other partners, the performance, indicators, the target minimum level of performance required for each performance indicator, and the consequence for each performance indicator are selected and specified by the establishing partner], the method including the steps of:

- selecting at least one other partner;

- selecting at least one performance indicator for each selected partner, and specifying the minimum level of performance and the consequence for the at least one selected indicator;

- collecting and storing data necessary to calculate the performance of the at least one selected partner on the at least one selected performance indicator;

- analyzing the collected and stored data to aggregate performance for the time or event count period; and determining the credit or debit due to each selected and participating partner for the time or event count period (see paragraphs [0180, 0189] and FIGS. 16-18).

**As per Claim 2:**

Eicher Jr. et al. discloses at least one selected partner is from a group of one or more partners where the group is defined by a common attribute that does not include the establishing partner (see paragraphs [0016, 0017]).

**As per Claim 3:**

Eicher Jr. et al. discloses at least one selected partner is from any group of at least one other partner (see paragraphs [0016, 0017]).

**As per Claim 4:**

Eicher Jr. et al. discloses the establishing partner selects a group of at least one other partner and all partners in the selected group of partners share a common attribute (see paragraphs [0016, 0017]).

**As per Claim 5:**

Eicher Jr. et al. discloses the establishing partner selects at least one other partner from more than one group of partners, each group having at least one other partner (see paragraphs [0016, 0017]).

**As per Claim 12:**

Eicher Jr. et al. discloses the establishing partner can specify the time or count measurement period of the selected performance indicators and designate the minimum required level of performance and the consequence for each selected performance indicator the at least one selected partner (see paragraph [0075], and FIGS 16-18).

**As per Claim 14:**

Eicher Jr. et al. discloses the establishing partner can specify the minimum level of performance for a selected performance indicator with any partner (see paragraph [0075]).

**As per Claim 15:**

Eicher Jr. et al. discloses the establishing partner can specify the minimum required level of performance for at least one selected performance indicator with at least one selected partner (see paragraphs [0075]).

**As per Claim 20:**

Eicher Jr. et al. discloses collecting and storing data necessary to calculate the selected performance indicators wherein the data quantitatively describes the product or service provided and the means of providing the product or service using selected attributes (see FIGS. 16 -18).

**As per Claim 21:**

Eicher Jr. et al. discloses A system for effectuating collaboration between one or many buyers and sellers, their third party service providers ("partners") in a supply community [which enables an establishing partner to establish consequences that motivate other partners to achieve or exceed a minimum level of performance on at least one performance indicator that measures aggregate performance for a set of events defined by a time or count period wherein the other partners, the performance indicators, the minimum level of performance required for each performance indicator, and the consequence for each level of performance are selected by the establishing party], the system comprising: means for an establishing partner to select at least one a other partner;

means for the establishing partner to select at least one performance indicator and specify the minimum level of performance and the consequence for each indicator;

means for collecting and storing data to calculate the level of performance of the selected at least one partner on the at least one performance indicator;

means for analyzing the data to generate aggregated levels of performance for the time or event count duration; and

means for determining the credit or debit due to the at least one selected participating partner for the established time or event count duration (see paragraphs [0180, 0189] and FIGS. 16-18).

**As per Claim 22:**

Eicher Jr. et al. discloses at least one selected partner is selected from a group of one or more partners where the group is defined by a common attribute and does not include the group of the establishing partner (see paragraphs [0016, 0017]).

**As per Claim 23:**

Eicher Jr. et al. discloses at least one selected partner is from any group of at least one other partner (see paragraphs [0016, 0017]).

**As per Claim 24:**

Eicher Jr. et al. discloses the establishing partner selects a group of at least one other partner where the at least one other partner in the selected group of partners shares a common attribute (see paragraphs [0016, 0017]).

**As per Claim 25:**

Eicher Jr. et al. discloses the establishing partner selects at least one other partner from more than one group of partners each group having at least one other partner (see paragraphs [0016, 0017]).



**As per Claim 32:**

Eicher Jr. et al. discloses the establishing partner can establish the time or count measurement period of the selected performance indicators and designate the minimum required level of performance and the consequence for each selected performance indicator for at least one selected partner (see paragraph [0075], and FIGS 16-18)

**As per Claim 34:**

Eicher Jr. et al. discloses the establishing partner must specify a time or count incentive program duration period that is greater than the specified time or count measurement period for the at least one selected performance indicator (see paragraphs [0075]).

**As per Claim 35:**

Eicher Jr. et al. discloses the establishing partner can specify the minimum required level of performance for a selected performance indicator with at least one selected partner (see paragraph [0075]).

**As per Claim 40:**

Eicher Jr. et al. discloses the system is modular in design and the modules include a customer care module, a data entry and management module, an incentive program creation and management module and an account management module (see paragraphs [0180, 0186, 0189], FIGS. 16-18 and Claim 1).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 6-8, 13, 26-28, 33, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eicher Jr. et al. (US 2002/0099598), in view of Ariff et al. (US 2003/0187802).**

**As per Claims 6, 26:**

Eicher Jr. et al. does not explicitly disclose the consequence for a selected incentive is a financial reward favorable to the at least one selected partner.

However, Ariff et al. discloses the consequence for a selected incentive is a financial reward favorable to the at least one selected partner (see paragraph [0064]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the consequence for a selected incentive is a financial reward favorable to the at least one selected partner to the system of Eicher Jr. et al.. One would have been motivated to do this in order to provide incentives to employees.

**As per Claims 7, 27:**

Eicher Jr. et al. does not explicitly disclose the consequence for a selected incentive is a financial reward favorable and a financial penalty unfavorable to the at

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least one selected partner when the minimum required level of performance is not achieved.

However, Ariff et al. discloses the consequence for a selected incentive is a financial reward favorable and a financial penalty unfavorable to the at least one selected partner when the minimum required level of performance is not achieved (see paragraph [0075]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the consequence for a selected incentive is a financial reward favorable and a financial penalty unfavorable to the at least one selected partner when the minimum required level of performance is not achieved to the system of Eicher Jr. et al.. One would have been motivated to do this in order to keep partners accountable.

**As per Claims 8, 28:**

Eicher Jr. et al. does not explicitly disclose the consequence for a selected incentive is a financial reward that is less than or more than the net cost savings realized by the establishing partner for each unit increment improvement in performance when the at least one participating partner achieves and exceeds the minimum required level of performance on the at least one performance indicator.

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However, Ariff et al. discloses the consequence for a selected incentive is a financial reward that is less than or more than the net cost savings realized by the establishing partner for each unit increment improvement in performance when the at least one participating partner achieves and exceeds the minimum required level of performance on the at least one performance indicator (see paragraph [0075]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the consequence for a selected incentive is a financial reward that is less than or more than the net cost savings realized by the establishing partner for each unit increment improvement in performance when the at least one participating partner achieves and exceeds the minimum required level of performance on the at least one performance indicator to the system of Eicher Jr. et al.. One would have been motivated to do this in order to keep partners accountable.

**As per Claim 13:**

Eicher Jr. et al. does not explicitly disclose the establishing partner can specify the time or count incentive program duration period for each incentive program for at least one or more selected partner.

However, Ariff et al. discloses the establishing partner can specify the time or count incentive program duration period for each incentive program for at least one more selected partner (see paragraph [0078]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner can specify the time or count incentive program duration period for each incentive program for at least one more selected partner to the system of Eicher Jr. et al.. One would have been motivated to do this in order to manage the incentive program effectively.

**As per Claim 33:**

Eicher Jr. et al. does not explicitly disclose the establishing partner can specify the time or count incentive program duration period for each incentive for at least one selected partner.

However, Ariff et al. discloses the establishing partner can specify the time or count incentive program duration period for each incentive for at least one selected partner (see paragraph [0078]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner can specify the time or count incentive program duration period for each incentive for at least one selected partner to the system of Eicher Jr. et al.. One would have been motivated to do this in order to manage the incentive program effectively.

**As per Claim 41:**

Eicher Jr. et al. discloses the customer care module provides information for prospective partners, and provides new partners with information, communication tools and training tools;

the master data entry and management module maintains the required and necessary master data about each business and locations;

the transaction module enters and manages the data that drives the performance and incentive modules;

the performance module evaluates the performance of each participating partner against the key performance indicators; and

the account management module provides a monthly financial report and invoice for each partner (see paragraphs [0029, 0180]).

Eicher Jr. et al. does not explicitly disclose the establishing partner can specify the time or count incentive program duration period for each incentive for at least one selected partner.

However, Ariff et al. discloses enrolls joining partners, and the incentive program creation and management module provides the partners with means to create and manage their own incentive programs (see paragraphs [0104, 0103, 0107]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add enrolls joining partners, and the incentive program creation and management module provides the partners with means to create and manage their own incentive programs to the system of Eicher Jr. et al.. One would have been motivated to do this in order to manage the incentive program effectively.

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**10. Claims 9-11, and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eicher Jr. et al. (US 2002/0099598), in view of D'Antoni et al. (US 2003/0139996).**

**As per Claims 9, 29:**

Eicher Jr. et al. does not explicitly disclose one selected partner may elect to participate or not to participate in any incentive and with any partner.

However, D'Antoni et al. discloses one selected partner may elect to participate or not to participate in any incentive and with any partner (see paragraph [0017]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add one selected partner may elect to participate or not to participate in any incentive and with any partner to the system of Eicher Jr. et al.. One would have been motivated to do this in order to allow for flexibility within the partnering system.

**As per Claims 10, 31:**

Eicher Jr. et al. does not explicitly disclose the consequence for a selected incentive program is a financial reward favorable to the at least one selected partner and a financial penalty unfavorable to the at least one selected partner when the minimum required level of performance is not achieved and the at least one selected partner may elect to or not to participate in the selected incentive program.

However, D'Antoni et al. discloses the consequence for a selected incentive program is a financial reward favorable to the at least one selected partner and a financial penalty unfavorable to the at least one selected partner when the minimum

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required level of performance is not achieved and the at least one selected partner may elect to or not to participate in the selected incentive program (see paragraph [0017]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the consequence for a selected incentive program is a financial reward favorable to the at least one selected partner and a financial penalty unfavorable to the at least one selected partner when the minimum required level of performance is not achieved and the at least one selected partner may elect to or not to participate in the selected incentive program to the system of Eicher Jr. et al.. One would have been motivated to do this in order to allow for flexibility within the partnering system.

**As per Claim 11:**

Eicher Jr. et al. does not explicitly disclose the consequence for a selected incentive program is a financial reward favorable to the at least one favorable selected partner and a financial penalty unfavorable to the at least one selected partner when the minimum required level is not achieved and the at least one selected partner may elect to participate or not to participate in the selected incentive program.

However, D'Antoni et al. discloses the consequence for a selected incentive program is a financial reward favorable to the at least one favorable selected partner and a financial penalty unfavorable to the at least one selected partner when the minimum required level is not achieved and the at least one selected partner may elect to participate or not to participate in the selected incentive program (see paragraph [0017]).



Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the consequence for a selected incentive program is a financial reward favorable to the at least one favorable selected partner and a financial penalty unfavorable to the at least one selected partner when the minimum required level is not achieved and the at least one selected partner may elect to participate or not to participate in the selected incentive program to the system of Eicher Jr. et al.. One would have been motivated to do this in order to allow for flexibility within the partnering system.

**As per Claim 30:**

Eicher Jr. et al. does not explicitly disclose the consequence for a selected incentive program is a financial reward favorable to the at least one selected partner and the at least one selected partner the at least one selected partner must participate in the selected incentive program.

However, D'Antoni et al. discloses the consequence for a selected incentive program is a financial reward favorable to the at least one selected partner and the at least one selected partner the at least one selected partner must participate in the selected incentive program (see paragraph [0017]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the consequence for a selected incentive program is a financial reward favorable to the at least one selected partner and the at least one selected partner the at least one selected partner must participate in the

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selected incentive program to the system of Eicher Jr. et al.. One would have been motivated to do this in order to allow for flexibility within the partnering system.

**11. Claims 16, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eicher Jr. et al. (US 2002/0099598), in view of Marshall (US 2002/0116266).**

**As per Claim 16:**

Eicher Jr. et al. does not explicitly disclose the establishing partner may increase any favorable reward or reduce the minimum required level of performance for a selected incentive program anytime during the time or count incentive program duration period for that incentive.

However, Marshall et al. discloses the establishing partner may increase any favorable reward or reduce the minimum required level of performance for a selected incentive program anytime during the time or count incentive program duration period for that incentive (see paragraph [0057]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner may increase any favorable reward or reduce the minimum required level of performance for a selected incentive program anytime during the time or count incentive program duration period for that incentive to the system of Eicher Jr. et al.. One would have been motivated to do this in order to add flexibility to the incentive program.

**As per Claim 36:**

Eicher Jr. et al. does not explicitly disclose the establishing partner may increase any favorable reward or reduce the minimum required level of performance for a specified incentive program anytime during the time or count incentive program duration for the selected incentive program.

However, Marshall et al. discloses the establishing partner may increase any favorable reward or reduce the minimum required level of performance for a specified incentive program anytime during the time or count incentive program duration for the selected incentive program (see paragraph [0057]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner may increase any favorable reward or reduce the minimum required level of performance for a specified incentive program anytime during the time or count incentive program duration for the selected incentive program to the system of Eicher Jr. et al.. One would have been motivated to do this in order to add flexibility to the incentive program.

**12. Claims 17-19, 37-39, 42 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eicher Jr. et al. (US 2002/0099598), in view of Magowan et al. (US 2005/0144075).**

**As per Claims 17, 37:**

Eicher Jr. et al. does not explicitly disclose the establishing partner may lower the time or count measurement period at anytime.

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However, Magowan et al. discloses the establishing partner may lower the time or count measurement period at anytime (see paragraph [0091]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner may lower the time or count measurement period at anytime to the system of Eicher Jr. et al.. One would have been motivated to do this in order to add flexibility to the incentive program.

**As per Claims 18, 38:**

Eicher Jr. et al. does not explicitly disclose the establishing partner may change the time or count measurement period at anytime provided that the time or count measurement is not longer than the time of count incentive program duration period.

However, Magowan et al. discloses the establishing partner may change the time or count measurement period at anytime provided that the time or count measurement is not longer than the time of count incentive program duration period (see paragraph [0091]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner may change the time or count measurement period at anytime provided that the time or count measurement is not longer than the time of count incentive program duration period to the system of Eicher Jr. et al.. One would have been motivated to do this in order to add flexibility to the incentive program.

**As per Claims 19, 39:**

Eicher Jr. et al. does not explicitly disclose the establishing partner may discontinue a selected and specified incentive at any time after completion of the time or count incentive program duration period.

However, Magowan et al. discloses the establishing partner may discontinue a selected and specified incentive at any time after completion of the time or count incentive program duration period (see paragraph [0091]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner may discontinue a selected and specified incentive at any time after completion of the time or count incentive program duration period to the system of Eicher Jr. et al.. One would have been motivated to do this in order to add flexibility to the incentive program.

**As per Claims 42, 47:**

Eicher et al discloses the establishing partner selects a group of partners and all partners in the selected group of partners share a common attribute, the establishing partner selects partners from more than one group of partners, the consequence for a selected performance indicator may be more than or less than the net cost savings realized by the establishing partner for each unit improvement in the at least one performance indicator, the at least one selected partner must participate in all incentive programs with all establishing partners, the at least one selected partners may elect to participate or not participate in any incentive program with any establishing partner, the establishing partner can specify the time and count measurement duration for each

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incentive for each other partner, the establishing partner can specify the time or count program duration for each incentive for at least one selected partner, the establishing partner can specify the minimum required level of performance for a selected performance indicator with at least one selected partner (see paragraph [0075] and FIGS. 16-18).

Eicher Jr. et al. does not explicitly disclose the establishing partner may change the time or count measurement at anytime provided that the time or count measurement period is not longer than the time or count incentive program duration period, and the establishing partner may discontinue an incentive program at anytime after the completion of the time or count duration period for that incentive program.

However, Magowan et al. discloses the establishing partner may change the time or count measurement at anytime provided that the time or count measurement period is not longer than the time or count incentive program duration period, and the establishing partner may discontinue an incentive program at anytime after the completion of the time or count duration period for that incentive program (see paragraph [0091]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner may change the time or count measurement at anytime provided that the time or count measurement period is not longer than the time or count incentive program duration period, and the establishing partner may discontinue an incentive program at anytime after the completion of the time or count duration period for that incentive program to the system

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of Eicher Jr. et al.. One would have been motivated to do this in order to add flexibility to the incentive program.

**13. Claim 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eicher Jr. et al. (US 2002/0099598), in view of Shaya et al. (US 2002/0161664).**

**As per Claim 43:**

Eicher et al. does not explicitly disclose the establishing partner and the at least one selected partner may be in the same corporate entity.

However, Shaya et al. discloses the establishing partner and the at least one selected partner may be in the same corporate entity (see paragraph [0190]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner and the at least one selected partner may be in the same corporate entity to the system of Eicher et al.. One would have been motivated to do this in order to support corporate entities such as retail stores.

**As per Claim 44:**

Eicher et al. does not explicitly disclose the establishing partner and the at least one selected partner may be in the same corporate entity.

However, Shaya et al. discloses the establishing partner and the at least one selected partner may be in the same corporate entity (see paragraph [0190]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner and the at least one selected partner may be in the same corporate entity to the system of Eicher et al..

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One would have been motivated to do this in order to support corporate entities such as retail stores.

**As per Claim 45:**

Eicher et al. does not explicitly disclose the establishing partner and the at least one selected partner may be in the same corporate entity.

However, Shaya et al. discloses the establishing partner and the at least one selected partner may be in the same corporate entity (see paragraph [0190]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner and the at least one selected partner may be in the same corporate entity to the system of Eicher et al.. One would have been motivated to do this in order to support corporate entities such as retail stores.

**As per Claim 46:**

Eicher et al. does not explicitly disclose the establishing partner and the at least one selected partner may be in the same corporate entity.

However, Shaya et al. discloses the establishing partner and the at least one selected partner may be in the same corporate entity (see paragraph [0190]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner and the at least one selected partner may be in the same corporate entity to the system of Eicher et al.. One would have been motivated to do this in order to support corporate entities such as retail stores.



***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Henry whose telephone number is 571-270-5102. The examiner can normally be reached on Monday through Thursday from 7:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-270-6102.

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RMH

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